YAHAYA ABDULLAH

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, ALOR SETAR
KC VOHRAH J
[CRIMINAL APPEAL NO. 52-21 OF 1987]
22 NOVEMBER 1990

CRIMINAL PROCEDURE: *Use of document to mislead principal - Statement in document false - Knowledge of falsity - Whether intent to defeat principal - Transfer allowance - Section 4(c) Prevention of Corruption Act 1961.*

The appellant Y was charged under s. 4(c) of the Prevention of Corruption Act 1961 (the Act) with knowingly using a document which contains a statement which is false to deceive a principal. He was employed with the LPN as a padi grader.

Although S, a superior officer of Y, was charged with abetting Y, he was acquitted and discharged without his defence being called. Y was convicted; hence this appeal. The public prosecutor also appeals against inadequacy of sentence Y was ordered to go on transfer from Anak Bukit to Megat Dewa on 1 September 1985; as a result he submitted written documents, P6, claiming for certain transfer subsistence and transport allowances payable by LPN. These allowances were paid in October. Y never moved as claimed. The issue was whether Y intended the materially false statements in P6 to mislead his principal and whether Y knowingly used such documents with intent to deceive his principal. It is noted that the charge did not specify the date on which Y submitted the documents; neither did the prosecution prove this date. Y claimed 12 September 1985 as the date on which he moved house.

Y's defence was that he believed that he could make the said claims before he moved house. The Sessions Judge evaluated the defence on two perspectives, whether they were submitted on or after 12 September 1985.

Held:

[1] Firstly, it is difficult to reconcile the Sessions Judge's rejection of the defence story that the impugned documents were submitted to DW2 before 12 September 1985 with her willingness to consider his defence on the basis that the documents were submitted before that date. The same primary facts adduced in the prosecution's case were examined and relied upon for differing inferences for alternative views; she examined virtually the same aspects of the defence story for both her findings; and ironically this defence story was the story that appeared to fill the gaps in the prosecution's case as regards the date of submission of the impugned documents and as regards the first person (DW2) at LPN to whom the said documents were submitted.

[2] The learned Judge posed the question whether the accused actually intended to move on 12 September 1985. With respect the question should be whether the accused, on the date he made the claim and submitted the documents P6 containing the claim to DW2, actually intended to move on 12 September 1985. This question has to be considered in the context of the fact that the Judge allowed that the accused was misled by DW2 into believing that he could obtain the claim in advance. One other important factor had also to be borne in mind - it was adduced as a fact that the accused made a written application on 3 September

1985 for the use of an LPN lorry on 12 September 1985 to move house and both the accused and DW2 said that this written application was submitted together with the impugned documents P6.

[3] It was the prosecution evidence that the notification was late; it is not the accused's duty to explain the shortcoming of the administration; if the accused had before 12 September 1985 received notification that he could move on 12 September 1985 and he did not move then perhaps one strand of a bundle or adverse inferences can be drawn against him.

[Y's appeal allowed.]

Cases referred to:
Lai Fook Kee v. PP [1970] 1 MLJ 134
London Computator Ltd. v. Seymour [1944] 2 All ER 11
Sinniah Sokkan v. PP [1963] MLJ 249
PP v. Ng Chong [1946] MLJ 68

Legislation referred to:
Prevention of Corruption Act 1961, s. 4(c)

For the public prosecutor - Azmi bin Ariffin, DPP
For the appellant - Zainal Rashid; M/s. Ahmad Farid & Associates

JUDGMENT

KC Vohrah J:

Yahaya Abdullah, the appellant, was charged in the Sessions Court, Alor Setar, as follows:

> That you sometime in the month of September 1985, at the Lembaga Padi dan Beras Negara, Megat Dewa, in the District of Kubang Pasu, in the State of Kedah, being an agent of the Malaysian Government, to *wit*, Pemilih Padi dan Beras attached to the Kompleks Lembaga Padi dan Beras Negara, Megat Dewa, did knowingly use with intent to deceive your principal documents, to *wit*:
>
> > Tuntutan Perpindahan pada 12 September 1985 dari Titi Besi Kepala Batas ke Kg. Tok Tong Megat Dewa, Kedah, attached with it the Taksiran Tuntutan Perpindahan Rumah dan Pertukaran,
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> in respect of which your principal, Lembaga Padi dan Beras Negara, Kedah, is interested and which documents contain statements which are false in material particulars, namely that you had gone on transfer with your family and housemaid from Titi Besi Kepala Batas to Kg. Tok Tong Megat Dewa, Kedah, and whereas in actual fact your family and your housemaid had never gone on transfer with you on the date stated in this claim which to your knowledge was intended to mislead the principal, and that you have thereby committed an offence punishable under s. 4(c) of the Prevention of Corruption Act 1961.

He was found guilty on the charge, convicted and sentenced to one day's imprisonment and fined RM2,000, in default of payment of which imprisonment for 6 months.

One Sulong bin Yusof, the superior officer of Yahaya, was charged with abetting Yahaya in the commission of the offence but he was acquitted and discharged without his defence being called. The public prosecutor appealed against the acquittal of Sulong bin Yusof but at the hearing the appeal was rightly abandoned.

As for Yahaya bin Abdullah (the accused), he has appealed against his conviction on the charge. The public prosecutor has on the other hand appealed against the inadequacy of the sentence passed on him.

Section 4(c) of the Prevention of Corruption Act 1961 under which the accused was charged, so far as relevant, reads as follows:

> ...if an agent knowingly uses with intent to deceive his principal, any...other document in respect of which the principal is interested, and which contains any statement which is false ...in any material particular, and which to his knowledge is intended to mislead the principal, he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding ten thousand dollars or to both such imprisonment and fine.

From s. 4(c) it appears that several matters need to be proved.

It would have to be proved that the accused used a document in respect of which his principal was interested. I would deal further with this aspect later.

It would also have to be proved that the document contained a statement which is false in a material particular. In connection with this materially false statement it is one" ...which to his knowledge is intended to mislead the principal." Bearing in mind the cases of *Lai Fook Kee v. PP* [1970] 1 MLJ 134, *London Computator, Ltd. v. Seymour* [1944] 2 All ER 11, *Sinniah Sokkan v. PP* [1963] MLJ 249 and *PP v. Ng Chong* [1946] MLJ 68 it must be proved that that the accused was aware of such false statement. And what further needs to be proved is that he intended the false statement to mislead his principal.

Lastly, in regard to use of the document, mentioned earlier, the document being one containing the materially false statement, the prosecution would have to prove that the accused knowingly used the document containing such statement with intent to deceive his principal.

To sum up, to succeed in securing a conviction on a charge under s. 4(c) the prosecution would have to prove:

1. that the accused used a document in respect of which his principal was interested;
2. that the document contained a statement which was false in a material particular;
3. that the accused knew that the statement was false in a material particular and that he intended it to mislead the principal;
4. that when the accused used the document he knowingly used such document with intent to deceive his principal.

I now turn to the case against the accused. The accused was employed as a padi grader by Lembaga Padi and Beras Negara (LPN), a public body, his principal. He was ordered to go on transfer from the LPN office at Anak Bukit, Kedah to the LPN office at Megat Dewa, Kedah on 1 September 1985. In the month of September 1985, the exact date of which unfortunately is not known, he submitted written documents, P6, claiming for certain allowances payable by LPN for the moving of house in connection with the transfer. In his claim he stated that he, his wife, 3 children and a maid had moved from Kg. Titi Besi to Kg. Tok Tong at 3 p.m. on 12 September 1985. He claimed a "transfer" allowance (which allowance, according to a circular issued by LPN, is payable before the actual moving of house) and "subsistence" and "transport" allowances for himself, the members of his family and his servant. And he received payment on the claim in October 1985. It was proved and it is not disputed that the accused submitted to LPN the documents (P6) for his claim. In other words he used documents in which his principal, LPN, was interested. LPN was interested in the documents, P6, as payment to be made to the accused in connection with the moving of house had to be based on the claim made in P6.

It was also proved and it is not disputed that the accused never moved house from Kg. Titi Besi to Kg. Tok Tong with his family and maid as claimed. In other words there can be no doubt that the statements in the written claim in P6 that he moved house with his family and that he did so on 12 September 1985 were false in material particulars.

There can also be no doubt and there is no dispute that the accused knew the statements in the documents were false in material particulars.

But did he intend the materially false statements to mislead his principal? The learned trial Judge said he did so intend. And did he knowingly use such documents with intent to deceive his principal? While the Judge did not make any specific finding on this, the tenor of her judgment when she considered whether there was intention to mislead appears to show there was an implicit finding of such an intention.

As adverted to earlier, the charge against the accused did not specify the date on which the accused submitted the documents, P6, to LPN, *i.e.* the charge did not specify the date on which he used the documents, merely that he used the documents sometime in September 1985. There was nothing adduced in the prosecution evidence showing the date on which the documents were submitted to the LPN.

As a result the learned Judge was left with the uncertainty whether the documents were submitted before 12 September 1985, the date claimed by the accused as the date on which he moved house, or after it.

The learned Judge felt compelled to evaluate the defence from two perspectives - from the perspective of the documents having being submitted after 12 September 1985 and from the perspective of the documents having been submitted before 12 September 1985 and she felt compelled to find the accused guilty, in effect, on alternative grounds.

The defence of the accused was that in anticipation of moving house on 12 September 1985 he had prepared the claim in the documents P6 with the help of DW2, a senior clerk, at LPN. It was the accused's defence that he was misled by DW2 into believing that he could make the said claims before he moved house. He said, and this was confirmed by DW2, that DW2 drew up a draft claim (D23) on particulars supplied by him for his guidance and that DW2 stated to him that he was entitled to put up the claim before moving house not only for the "transfer allowance" (which is clearly allowable by an LPN circular) but also for "subsistence" and "transport" allowances. The accused said that he submitted the documents, P6, relating to the claim on 3 September 1985 to DW2 together with a letter requesting for the use of a lorry from LPN to transport his household goods. DW2, who was a prosecution witness offered to the accused, confirmed receiving the claim documents, P6, saying that he received P6 either on 2 September 1985 or 3 September 1985. He said that this was the first time he processed such a claim. And DW2 said that after he had received P6, he examined P6 and signed on one page acknowledging that he had "checked" P6 after which the documents were given to Encik Sulong (the manager of the LPN complex at Megat Dewa); the said documents P6 were then handed back to him (DW2) and he subsequently handed P6 over to the despatch clerk for despatch to LPN Headquarters at Anak Bukit. We know that no evidence was adduced to show that the documents, D6, were used after 12 September 1985 but the prosecution officer in the Court below argued at the close of the case for the prosecution that the documents were submitted after that date though later at the close of the case for the defence he conceded the possibility of the documents having been used before the date. He probably based his earlier submission on the fact that the documents were forwarded to the head of department (PW9), LPN, Kedah Anak Bukit with a covering

letter dated 28 September 1987 by Encik Sulong, the then manager of the LPN complex where the accused had worked. This latter person was charged with abetting the accused in the commission of his offence and as stated earlier he was acquitted and discharged without his defence being called and rightly so too. The covering letter to PW9 merely mentioned that the documents relating to the accused's claim were forwarded for his consideration and approval. I do not think it can be justifiably inferred from that letter alone that the documents relating to the claim were submitted by the accused, *i.e.*, used by him, after 12 September 1985.

The learned Judge examined the defence against primary facts adduced by the prosecution in the case and appeared to doubt that DW2 prepared D23 for the accused for his claim made in advance and she appeared to doubt the defence that the claim was made in advance. She had earlier stated that as the accused was personally well aware that he did not move on 12 September 1985 as claimed he undoubtedly knew that the documents submitted by him were false in material particulars and he had knowingly used the documents. By this I take it she meant that the documents were submitted after 12 September 1985. She also stated that in the claim in P6 there was no mention that the allowances were claimed in advance and she said that "(these) circumstances support the inference that this defence was something of an after thought." In other words she considered it more probable that the documents D6 were used after 12 September 1985. But as I have stated there was nothing concrete in the prosecution evidence to show that the documents P6 were submitted or used by the accused after 12 September 1985.

It was thus not surprising that the Judge also considered the possibility of the accused having submitted the documents, P6, before 12 September 1985. She said, "However, even allowing that the accused was misled by DW2 into believing (that) he could obtain the claim in advance, the question still remained whether the accused actually intended to move on 12 September 1985".

There are two comments which can be made on this statement.

Firstly, it is difficult to reconcile her rejection of the defence story that the impugned documents were submitted to DW2 before 12 September 1985 with her willingness to consider his defence on the basis that the documents were submitted before that date. The same primary facts adduced in the prosecution's case were examined and relied upon for differing inferences for alternative views; she examined virtually the same aspects of the defence story for both her findings; and ironically this defence story was the story that appeared to fill the gaps in the prosecution's case as regards the date of submission of the impugned documents and as regards the first person (DW2) at LPN to whom the said documents were submitted.

As regards the second comment, it is this. The learned Judge posed the question whether the accused actually intended to move on 12 September 1985. With respect the question should be whether the accused, on the date he made the claim and submitted the documents P6 containing the claim to DW2, actually intended to move on 12 September 1985. This question has to be considered in the context of the fact that the Judge allowed that the accused was misled by DW2 into believing that he could obtain the claim in advance. And one other important factor had also to be borne in mind - it was adduced as a fact that the accused made a written application on 3 September 1985 for the use of an LPN lorry on 12 September 1985 to move house and both the accused and DW2 said that this written application was submitted together with the impugned documents P6.

The prosecution evidence showed that outcome of the accused's application to use an LPN lorry on 12 September 1985 was made known to him only on 15 September 1985. Now the Judge considered it unreasonable for the accused not to have enquired of the outcome before 12 September 1985. The accused explained "Even though I had packed my household goods I did not find out whether approval had been given to use the lorry because it was the procedure that the administration should inform me." In fact the prosecution evidence did show that the approving authority was at the LPN Headquarters at Anak Bukit and though approval was given on 11 September 1985 the administrative section at LPN, Anak Bukit did not inform the accused at LPN, Megat Dewa of the approval until 15 September 1985. It is not the prosecution's contention that the evidence of late notification was fabricated. It was the prosecution evidence that the notification was late. Why has the accused to explain the shortcoming of the administration so to speak? Now if the accused had before 12 September 1985 received notification that he could move on 12 September 1985 and he did not move then perhaps one strand of a bundle or adverse inferences can be drawn against him.

Then again the Judge thought that the accused having decided to move on 12 September 1985 when his wife was in an advanced state of pregnancy it would have been more reasonable to have expected him to take all steps necessary to effect the move before his wife delivered. But his unchallenged evidence was that she was due to deliver in mid October although, and this was not challenged, she delivered prematurely on 16 September 1985 to a son (whose birth certificate was produced).

An adverse inference was drawn that that the accused only saw the owner of the house he was to move in on 7 or 8 September 1985 meaning "that on 3 September when he made the claim he had not confirmed that he had a house to move in on 12 September". His evidence was that two weeks before 1 September 1985 he had gone to see someone, Encik Mustafa, to ask him to look for a house to rent and sometime in early September, either 7 or 8 September, he went to see the houseowner, one Idris, and he signed a tenancy agreement with him. If well before he submitted his claim he had got someone to look for a house for him I think it is fair to assume that he was confident of getting a house by 12 September 1985, the date he intended to move. The Judge doubted the authenticity of the tenancy agreement but that is a different issue.

One other matter - the accused may have accepted payment on his false claim; he said he was told by his superior officer he could accept payment in anticipation of his moving house at a later date. Even if the explanation is not accepted, his acceptance of the payment and his use of the money may give rise to other criminal offences but we are not concerned with them now. So far as the prosecution's case is concerned in view of what has been discussed, I am of the view that the defence did create a reasonable doubt on the prosecution's case and the accused should have been acquitted on the charge. I allow the appeal. Conviction and sentence are set aside.

Also found at [1991] 1 CLJ 398